

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 95-93

December 5, 1995

TO: All Regional Directors, Officers-in-Charge,
and Resident Officers

FROM: B. Allan Benson, Acting Associate General Counsel

SUBJECT: Litigation of Salting Cases

In Memorandum OM 95-80, guidance was provided concerning the litigation of salting cases. Specifically, field offices were requested to hold in abeyance all prehearing merit salting cases that raised issues that would be affected by the Supreme Court's decision in Town & Country.¹ As you are aware, the Court issued its decision on November 28, 1995 (copy attached) and found that all paid union organizers (officials or members) are employees under Section 2(3) of the National Labor Relations Act. Accordingly, you should resume processing these cases.

As the Court's resolution of employee status may enhance the willingness of respondents to remedy salting unfair labor practices, settlement efforts again should be explored before issuing complaints or resuming formal proceedings.

Although the Court's decision resolves one troublesome issue in these types of cases, many of the others that arise in these situations still require special care and investigation; i.e., the establishment of neutral rules or criteria in the application and hiring processes. These and other defenses should be carefully considered. The suggestions on the handling of these issues provided in OM 94-73 should be reviewed.

Finally, because of the uniqueness of these cases, we see a need to continue the requirement for Regions to send copies of all salting charges to Richard Hardick in Operations-Management. You may contact him also to discuss any questions concerning salting cases.

¹ Town & Country Electric, Inc., 309 NLRB 1250 (1992); Town & Country Electric v. NLRB, no. 92-3911 (8th Cir. Aug. 31, 1994); and National Labor Relations Board v. Town & Country Electric, Inc., and Ameristaff Personnel Contractors, LTD., No. 94-947, November 28, 1995.

I realize the difficulties you face in investigating and litigating these cases, especially as guidance has changed and evolved due to the Supreme Court case and the budget process. I am appreciative for all your efforts to overcome these difficulties and process these cases with the timeliness and quality that they deserve.

B. A. B.

Attachment

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